

Notice of Allowability

Application No.

10/663,190

Examiner

Callie E. Shosho

Applicant(s)

OHKUBO ET AL.

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 1/29/07 and telephonic interview conducted 4/16/07.
2. ☒ The allowed claim(s) is/are 1,3-12,14 and 16-31.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 4/16/07.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Examiner's Amendment

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

(1) Claim 1, line 2, after "and" and before "polymer", insert "a".

(2) Claim 8, line 7 after formula (3), after "AO" and before "alkylene oxide", insert "represents".

(3) Claim 8, line 7 after formula (3), after the first occurrence of "oxide", delete "and n represents a degree of polymerization of alkylene oxide,".

(4) Claim 9, line 1, after "degree" and before "n", insert "of polymerization".

(5) Claim 11, line 1, after "wherein" and before "polymer", delete "a" and insert "the".

(6) Claim 22, line 7 after formula (3), after "AO" and before "alkylene oxide", insert "represents".

(7) Claim 22, line 7 after formula (3), after the first occurrence of "oxide", delete "and n represents a degree of polymerization of alkylene oxide,".

(8) Claim 23, line 2, after "degree" and before "n", insert "of polymerization".

(9) Claim 25, line 2 after "constitutes" and before "colored", insert "the".

(10) Claim 26, line 1, after “degree” and before “n”, insert “of polymerization”.

(11) Claim 27, line 1, after “degree” and before “n”, insert “of polymerization”.

(12) Claim 28, line 3, after “and” and before “dye”, delete “a” and insert “the”.

(13) Claim 29, line 2, after “a” and before “wherein”, delete “colorant” and insert “dye”.

2. Authorization for this examiner’s amendment was given in a telephone interview with Cameron Kerrigan on 4/16/07.

Statement of Reasons for Allowance

3. In the office action mailed 12/14/06, claim 11 was objected to for an informality, claim 16 was rejected under 35 USC 112, second paragraph, claims 1, 12, and 28 were provisionally rejected on the grounds of nonstatutory obviousness type double patenting over copending 10/418,779, claims 3-10, 14, 26, 30, and 31 were objected to as being dependent upon a rejected base claim, be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and claims 17-25, 27, and 29 were allowed.

Applicants' amendment filed 1/29/07 overcomes the claim objection and 35 USC 112, second paragraph rejection of record. Further, the double patenting rejection of record is rendered moot in view of the abandonment of copending 10/418,779.

Thus, present claims 1, 3-12, 14, and 16-31 are allowable over the "closest" prior art Vincent et al. (U.S. 6,841,591) and Ninomiya et al. (U.S. 2003/0055115) for the following reasons:

Vincent et al. disclose dispersion of colored particles prepared by dissolving polymer and dye in organic solvent, emulsifying the polymer and dye using a surfactant or emulsifier, and subsequently copolymerizing the mixture with polymerizable monomer.

However, there is no disclosure or suggestion in Vincent et al. of reactive emulsifier as required in all the present claims. Further, while Vincent et al. disclose that the colored particles possess diameter of 50-200 nm, there is no disclosure or suggestion of peak particle diameter and thus, no disclosure or suggestion that the peak particle diameter, which is defined as a diameter

corresponding to the peak of the volume average particle diameter distribution curve (see page 42 of the present specification), is at most 50 nm as required in all the present claims.

Ninomiya et al. disclose dispersion of colored particles prepared by dissolving polymer and dye in organic solvent, adding emulsifier, and subsequently copolymerizing the emulsified mixture with polymerizable monomer.

However, there is no disclosure or suggestion in Ninomiya et al. of reactive emulsifier as required in all the present claims. Further, while Ninomiya et al. disclose that the colored particles possess volume average particle diameter of 5-200 nm, there is no disclosure or suggestion of peak particle diameter and thus, no disclosure or suggestion that the peak particle diameter, which is defined as a diameter corresponding to the peak of the volume average particle diameter distribution curve (see page 42 of the present specification), is at most 50 nm as required in all the present claims.

Thus, it is clear that Vincent et al. or Ninomiya et al., either alone or in combination, do not disclose or suggest the present invention.

In light of the above, the present claims are passed to issue.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Callie E. Shosho whose telephone number is 571-272-1123. The examiner can normally be reached on Monday-Friday (6:30-4:00) Alternate Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Callie E. Shosho
Primary Examiner
Art Unit 1714

CS
4/16/07